

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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HC2, Inc., :  
: Plaintiff, :  
: :  
: : 20-cv-3178 (LJL)  
-v- :  
: :  
ANDREW DELANEY, :  
: Defendant. :  
: :  
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LEWIS J. LIMAN, United States District Judge:

The defendant has filed amended counterclaims referring, in Paragraph 36, to guidance issued by the New York City Health Department on February 14, 2020, and, in Paragraph 37 to an interim guidance issued by the Centers for Disease Control and Prevention (“CDC”) on March 2, 2020, to businesses and employers. Dkt. No. 74 ¶¶ 36, 37. In addition, Paragraph 38 refers to Governor Cuomo’s March 7, 2020 Executive Order, Executive Order 202. Dkt. No. 74 ¶ 38. The allegations are made in support of Defendant’s claim that the termination of his employment following his March 17, 2020 email violated N.Y. Labor Law Section 740. In addition, Paragraph 14 of the counterclaims and Defendant’s March 17, 2020 email refers to a speech given by President Trump. *Id.* ¶ 14.

“In considering a motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6), a district court may consider the facts alleged in the complaint, documents attached to the complaint as exhibits, and documents incorporated by reference in the complaint.” *DiFolco v. MSNBC Cable L.L.C.*, 622 F.3d 104, 111 (2d Cir. 2010). Accordingly, Plaintiff is ORDERED to file, by December 4, 2020, an affidavit or declaration attaching authentic copies of the documents referred to in paragraphs 36-38 and 14 of the counterclaims and in the March 17, 2020 email, all of which should have pre-existed March 18, 2020.

SO ORDERED.

Dated: November 30, 2020  
New York, New York



LEWIS J. LIMAN  
United States District Judge